

1 Patricia L. Peden (CA 206440)
2 LAW OFFICE OF PATRICIA L. PEDEN
3 1316 67th Street, Suite 6
4 Emeryville, California 94608
5 Telephone: (510) 268-8033

6 Nicholas H. Patton (admitted pro hac vice)
7 Robert W. Schroeder III (admitted pro hac vice)
8 Geoffrey P. Culbertson (admitted pro hac vice)
9 PATTON, TIDWELL & SCHROEDER, L.L.P.
4605 Texas Boulevard
Post Office Box 5398
Texarkana, Texas 75505-5398
Telephone: (903) 792-7080
Facsimile: (903) 792-8233

10 Courtney Towle (CA 221698)
11 Patton, Tidwell & Schroeder, L.L.P.
12 1316 67th Street
Emeryville, CA 94608
Telephone: (415) 939-2133

13 Attorneys for Plaintiffs
14 VIESTE, LLC and VIESTE DEVELOPMENT, LLC

JASON A. GELLER State Bar No. 168149
15 DAVID P. NEMECEK, JR. State Bar No. 194402
16 DAVID P. BOROVSKY State Bar No. 216588
17 ARI A. BARUTH State Bar No. 258418
LONG & LEVIT LLP
465 California Street, Suite 500
San Francisco, CA 94104
18 TEL: (415) 397-2222 FAX: (415) 397-6392
19 jgeller@longlevit.com; dnemecek@longlevit.com;
dborovsky@longlevit.com; abaruth@longlevit.com

20 Attorneys for Defendants and Counterclaimants
21 HILL REDWOOD DEVELOPMENT, LTD., HILL
22 INTERNATIONAL, INC., HILL INTERNATIONAL
23 DEVELOPMENT, LTD., REDWOOD CAPITAL
ADVISORS, LLC, and Defendants STEPHEN
GOODMAN, AND S. DICK SARGON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

24
25
26 (1) VIESTE, LLC, an Indiana corporation; and
27 (2) VIESTE DEVELOPMENT, LLC; an
Indiana corporation,
Plaintiffs,

28 v.

No. C 09-04024 JSW

- 1 (1) HILL REDWOOD DEVELOPMENT,
LTD., a British Virgin Islands corporation;
- 2 (2) HILL INTERNATIONAL, INC., a
Delaware corporation;
- 3 (3) HILL INTERNATIONAL
DEVELOPMENT LTD., a British Virgin
- 4 Islands corporation;
- 5 (4) REDWOOD CAPITAL ADVISORS,
LLC., a Delaware corporation;
- 6 (5) STEPHEN GOODMAN, individually; and
- 7 (6) S. DICK SARGON, individually;
Defendants,

8 And related Counterclaim.

STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
7 or responses to discovery and that the protection it affords from public disclosure and use extends
8 only to the limited information or items that are entitled to confidential treatment under the applicable
9 legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
10 Stipulated Protective Order does not entitle them to file confidential information under seal; Civil
11 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied
12 when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
18 Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
20 well as their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or items
22 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

23 2.5 Disclosure or Discovery Material: all items or information, regardless of the
24 medium or manner in which it is generated, stored, or maintained (including, among other things,
25 testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses
26 to discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter
 2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness
 3 or as a consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a party to this action. House
 5 Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.8 Non-Party: any natural person, partnership, corporation, association, or other
 7 legal entity not named as a Party to this action.

8 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
 9 action but are retained to represent or advise a party to this action and have appeared in this action on
 10 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

11 2.10 Party: any party to this action, including all of its officers, directors,
 12 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

13 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 14 Material in this action.

15 2.12 Professional Vendors: persons or entities that provide litigation support
 16 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
 17 organizing, storing, or retrieving data in any form or medium) and their employees and
 18 subcontractors.

19 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
 20 "CONFIDENTIAL."

21 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 22 Producing Party.

23 3. SCOPE

24 The protections conferred by this Stipulation and Order cover not only Protected Material (as
 25 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
 26 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
 27 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
 28 However, the protections conferred by this Stipulation and Order do not cover the following

1 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
2 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
3 publication not involving a violation of this Order, including becoming part of the public record
4 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
5 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
6 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
7 Protected Material at trial shall be governed by a separate agreement or order.

8 4. DURATION

9 Even after final disposition of this litigation, the confidentiality obligations imposed by this
10 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
11 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
12 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
13 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
14 limits for filing any motions or applications for extension of time pursuant to applicable law.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under this Order
18 must take care to limit any such designation to specific material that qualifies under the appropriate
19 standards. The Designating Party must designate for protection only those parts of material,
20 documents, items, or oral or written communications that qualify – so that other portions of the
21 material, documents, items, or communications for which protection is not warranted are not swept
22 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized designations are
23 prohibited. Designations that are shown to be clearly unjustified or that have been made for an
24 improper purpose (e.g., to unnecessarily encumber or retard the case development process or to
25 impose unnecessary expenses and burdens on other parties) expose the Designating Party to
26 sanctions.
27
28

1 If it comes to a Designating Party's attention that information or items that it designated for
2 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
3 that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
5 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
6 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
7 designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents, but
10 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
11 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion
12 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
13 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

14 A Party or Non-Party that makes original documents or materials available for
15 inspection need not designate them for protection until after the inspecting Party has indicated which
16 material it would like copied and produced. During the inspection and before the designation, all of
17 the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting
18 Party has identified the documents it wants copied and produced, the Producing Party must determine
19 which documents, or portions thereof, qualify for protection under this Order. Then, before producing
20 the specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page
21 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
22 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins).

24 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
25 the Designating Party identify, by line and page, all "Confidential Information" subject to this
26 Protective Order by notifying all parties in writing within thirty (30) days after the conclusion of the
27 deposition.
28

(c) for responses provided in response to written discovery, including interrogatory responses, that the Designating Party affix the legend "CONFIDENTIAL" to each written discovery response that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making clear in its discovery response which sections of the response must be treated as Confidential subject to this Protective Order).

(d) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin

1 the process by conferring directly (in voice to voice dialogue; other forms of communication are not
2 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
3 explain the basis for its belief that the confidentiality designation was not proper and must give the
4 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
5 and, if no change in designation is offered, to explain the basis for the chosen designation. A
6 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in
7 this meet and confer process first or establishes that the Designating Party is unwilling to participate
8 in the meet and confer process in a timely manner.

9 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
10 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
11 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
12 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
13 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
14 competent declaration affirming that the movant has complied with the meet and confer requirements
15 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion
16 including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive
17 the confidentiality designation for each challenged designation. In addition, the Challenging Party
18 may file a motion challenging a confidentiality designation at any time if there is good cause for
19 doing so, including a challenge to the designation of a deposition transcript or any portions thereof.
20 Any motion brought pursuant to this provision must be accompanied by a competent declaration
21 affirming that the movant has complied with the meet and confer requirements imposed by the
22 preceding paragraph.

23 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
24 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
25 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Likewise,
26 frivolous designations may expose the Designating Party to sanctions. Unless the Designating Party
27 has waived the confidentiality designation by failing to file a motion to retain confidentiality as
28

described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) Employees and consultants of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation, provided that said employee or consultant is (1) working under the supervision of Outside Counsel of Record; (2) Outside Counsel of Record has signed the "Acknowledgement and Agreement to Be Bound" and (3) said employee or consultant has been provided with a copy of this Protective Order and advised of his or her obligation to maintain the confidentiality of designated material;

(c) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 (e) the court and its personnel;

2 (f) court reporters and their staff, professional jury or trial consultants, mock
3 jurors, persons retained by the receiving party specifically to prepare demonstrative or other exhibits
4 for deposition, trial or other court proceedings in this matter and persons employed by them, and
5 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
6 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (g) during their depositions, witnesses in the action to whom disclosure is
8 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
9 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Nothing
10 herein shall prevent disclosure of Confidential Information to any person who is identified as an
11 authority, source or recipient of the document. Furthermore, regardless of its designation as
12 Confidential Information, if a document makes reference to the actual or alleged conduct or statement
13 of a person, Outside Counsel may discuss such conduct or statements with such person. Pages of
14 transcribed deposition testimony or exhibits to depositions that reveal Protected Material may not be
15 disclosed to anyone except as permitted under this Stipulated Protective Order.

16 (h) the author or recipient of a document containing the information or a custodian
17 or other person who otherwise possessed or knew the information.

18 This Protective Order shall not bar any attorney herein in the course of rendering advice to his
19 or her client with respect to this litigation from conveying to any party client his or her evaluation in a
20 general way of any "Confidential" information produced by another party herein.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
22 OTHER LITIGATION

23 If a Party is served with a subpoena or a court order issued in other litigation that compels
24 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party
25 must:

26 (a) promptly notify in writing the Designating Party. Such notification shall
27 include a copy of the subpoena or court order;

28

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
3 to seek its modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
7 Party waives any right to object on any ground to use in evidence of any of the material covered by
8 this Protective Order.

9 12.3 Filing Protected Material. Without written permission from the Designating
10 Party or a court order secured after appropriate notice to all interested persons, a Party may not file in
11 the public record in this action any Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
13 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
14 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the
15 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
16 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
17 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information
18 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

19 13. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
21 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
22 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
23 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the
24 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
25 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
26 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
27 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
28 compilations, summaries or any other format reproducing or capturing any of the Protected Material.

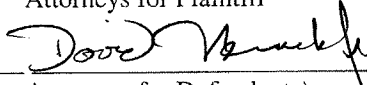
Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: October 27, 2010


Attorneys for Plaintiff

DATED: 11/3/10


Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 11/3/2010



[Name of Judge] DONNA M. RYU
United States District/Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ in the case of Vieste, LLC and Vieste Development, LLC v. Hill Redwood, Ltd., et. al., Case No. C 09-04024 JSW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]